



State of Utah

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Office of the Governor  
PUBLIC LANDS POLICY COORDINATING OFFICE

KATHLEEN CLARKE  
*Director*

November 14, 2016

*Submitted via electronic mail: [khoffman@blm.gov](mailto:khoffman@blm.gov)*

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Division of Lands and Minerals  
Bureau of Land Management  
Utah State Office  
440 West 200 South, Suite 500  
Salt Lake City, UT 84101

Subject: Protest of November 2016 Oil and Gas Lease Sale

Dear Mr. Hoffman:

The State of Utah protests the deferral of 74 parcels (as well as 5 partially deferred parcels) from the Bureau of Land Management (BLM)'s November 2016 oil and gas lease sale<sup>1</sup> (lease sale to actually be held on December 13, 2016),<sup>2</sup> and requests that the BLM instead offer all 74 parcels in the lease sale. If inclusion of these parcels in the November 2016 lease sale is not possible, the BLM should include them in the February 2017 lease sale. The State does not protest the inclusion of 28 parcels in the lease sale, and fully supports the lease of these parcels. The State has a regulatory and economic interest in oil and gas development on BLM land in the Uintah Basin and, accordingly, has standing to protest the BLM's deferral. The State has endeavored to cooperate with the BLM on this project and submitted comment letters to the BLM on May 6 and July 15, 2016.

Of the deferred parcels, all are open for leasing under the Resource Management Plan (RMP), however, the parcels are deferred for a variety of reasons designed to protect habitat, lands with wilderness characteristics, and sensitive species without the benefit of actual environmental analysis. The deferment of so many parcels is an abuse of BLM's deferment policy. Most if not all of the deferred parcels could be part of the lease sale if

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<sup>1</sup> Environmental Assessment, November 2016 Competitive Oil and Gas Lease Sale, DOI-BLM-UT-G010-2016-033-EA, Appendix D, Deferred Parcels, at 131.

<sup>2</sup> Notice of Competitive Oil and Gas Internet-Based Lease Sale, DOI-BLM-UT-G010-2016-033-EA, October 13, 2016.

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BLM applied standard best management practices and newly developed sage-grouse stipulations. The State strongly recommends BLM examine the deferred parcels for squandered opportunities and reinstate them into the the planned November Lease Sale.

### **BLM Must Conduct Oil and Gas Leasing as Directed by Law and Agency Policy**

The BLM's 2010 Instruction Memorandum for Oil and Gas Leasing Reform directs the BLM to apply stipulations to new leases when necessary. Stipulations are the proper legal tool to protect and mitigate harms to sensitive environments in potential lease parcels. Continual deference of a parcel only causes uncertainty for land managers and natural resource users. The 2010 IM requires field offices to perform a "Lease Parcel Review and Lease Issuance Process." The process states:

The purpose of lease parcel review by the field offices is to *determine the conditions under which leasing and eventual development should occur* if allowed to proceed. Lease parcel reviews for expressions of interest will be conducted and documented simultaneously with the NEPA compliance process. The goal of the parcel review and NEPA compliance process is to (1) determine parcel availability; (2) *evaluate existing stipulations*; (3) *identify new stipulations, if applicable*; (4) provide for public involvement; and (5) develop detailed background information for the NEPA compliance process. (Emphasis added.)

In accordance with the 2010 IM, the BLM should focus its efforts on "evaluating existing stipulations" and "identifying new stipulations." These new stipulations should include the stipulations recommended by the State in its review of the preliminary list for the November lease sale. The BLM's massive deferral of parcels is a dereliction of its duty to identify new stipulations under the 2010 IM.

The 2010 IM also calls on BLM field offices to evaluate stipulations under the relevant RMP. The 2010 IM states:

Field offices will determine whether leasing the parcel is in conformance with the RMP. In addition, the field office will evaluate whether oil and gas management decisions identified in the RMP (including lease stipulations) are still appropriate and provide adequate protection of resource values (including, but not limited to, biological, cultural, visual, and socioeconomic resource values). *If the lease stipulations do not provide adequate resource protection, it may be necessary to develop new lease stipulations or revise*

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*existing ones.* A lease stipulation may be revised consistent with modification criteria found in the RMP, or as necessary given conditions or issues not anticipated in the RMP. (Emphasis added.)

When existing lease stipulations under the RMP do not provide adequate protections for wildlife habitat or other resources, the BLM should, in coordination with the State, find alternative ways in which parcels can be leased while still protecting resources. Accordingly, the State has provided useful recommendations on the BLM's preliminary list, asking the BLM to apply certain protections that go beyond the stipulations in the VFO RMP. The BLM should incorporate these recommendations and proceed with the lease sale rather than merely keep 79 parcels in a state of flux and uncertainty.

### **Deferment of Prioritized Sage-Grouse Parcels must be Time-delimited**

The BLM cannot defer leasing of oil and gas parcels in potential sage-grouse habitat indefinitely. According to the EA, 32 of the deferred parcels were deferred due to concerns related to sage-grouse habitat.<sup>3</sup> The BLM's 2015 RMP Amendment for greater sage-grouse provides protections such as timing stipulations and buffers which should allow oil and natural gas development to proceed forward. The RMP Amendment allows for prioritization of leasing in non-habitat areas first, then proceeds to least suitable habitat.<sup>4</sup> Many of these deferred parcels have already been deferred from prior lease sales, both before and after the development of the greater sage-grouse RMP Amendment, and there is no certainty that these parcels with potential sage-grouse habitat will ever be offered for lease.

The BLM's RMP Amendments for greater sage-grouse are designed to allow for the sustained use and multiple yield of BLM land while protecting sage-grouse habitat, however, it appears that any nominated parcels, which include sage-grouse habitat, will now be deferred indefinitely and have become de facto unavailable for leasing. The continued deferral of certain parcels that are open to leasing under the VFO RMP amounts to de facto land use planning, which violates FLPMA's public process requirements. The BLM must ultimately include these open parcels in a future lease sale, and the State requests that these parcels be reinstated in the upcoming lease sale.

The across-the-board deferral of parcels in sage-grouse habitat is excessive. The State made specific, practical requests in its May 6 comment letter for the protection of

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<sup>3</sup> DOI-BLM-UT-G010-2016-033-EA, Appendix D. Deferred Parcels

<sup>4</sup> Utah Greater Sage-Grouse Approved Resource Management Plan Amendment September 2015, Section 2.2.6 Mineral Resources.

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sage-grouse habitat, and these requests should have been incorporated into the EA. The State requested avoidance and minimization of disturbance impact within sagebrush habitats and compensatory mitigation for impacts which cannot be avoided. Mitigation methods should follow the State's 2013 *Conservation Plan for Greater Sage-grouse in Utah*. The State also recommended provisions to avoid construction and vehicle noise disturbances during brood-rearing activities, and specific protections in the winter to reduce impacts to wintering sage-grouse. Topographic screening and the maintaining and enhancing of wet meadows and riparian habitat are also important management measures that could feasibly be used to mitigate and reduce impacts. As such, the parcels containing sagebrush habitat do not need to be deferred in the lease sale, and the BLM should revisit the EA so that these recommendations can be incorporated.

### **Deferral of Parcels due to ESA-listed Species**

The BLM has deferred 24 parcels from the upcoming lease sale due to the presence of white-tailed prairie dog colonies or yellow-billed cuckoo habitat. Neither the VFO RMP nor statute, regulation, or BLM policy require the BLM to defer leasing from the habitat of ESA-listed species (or fail to analyze nominated lease parcels in the EA.) The BLM should have used one of the many tools at its disposal for mitigating impacts to white-tailed prairie dog and yellow-billed cuckoo while still offering these parcels for lease. The State recommended practical and effective measures to protect white-tailed prairie dog in its May 6, 2016 letter. The complete deferral of all parcels with ESA-listed species' habitat is excessive and abuses the BLM's discretionary authority.

The BLM should have included an alternative in the EA that evaluated the effects of leasing on these parcels. Such an alternative would have allowed appropriate restrictions and conditions to successfully mitigate any impacts to white-tailed prairie dog or yellow-billed cuckoo habitat. The State protests the deferral of these 24 parcels and asks that they be included in the lease sale, with appropriate conditions.

### **Utah Public Lands Initiative as Reason for Deferral**

13 of the 79 deferred parcels have been deferred "in the judgment of the Utah State Director" because the parcels are included in areas that would be protected under the proposed Utah Public Lands Initiative. The Utah Public Lands Initiative is not yet law and has no impact on the terms of the 2008 VFO RMP. The State has repeatedly asked the BLM to incorporate the recommendations of the UPLI into its land management planning or withhold actions until the UPLI process is complete, but the BLM has repeatedly declined to do so. (For example, the State has requested that the BLM withhold implementation of the

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Moab Master Leasing Plan until the UPLI has had the opportunity for passage in Congress, but the BLM refused.) It is disingenuous for the BLM to use the UPLI's proposals when deemed convenient while ignoring the UPLI's recommendations in other situations. The State protests the deferral of these 13 parcels and asks that they be included in the lease sale.

### **Lands with Wilderness Characteristics**

The BLM has deferred 9 parcels because of an incomplete wilderness characteristics inventory. The fact that the BLM has not completed wilderness inventories of these lands does not justify the BLM's refusal to perform any analysis on the effects of leasing these lands or include them in the lease sale. The BLM cannot use its failure to complete a wilderness characteristics inventory as a tool to defer leasing. Un-inventoried lands that are open for leasing under the VFO RMP should be included in the lease sale.

The BLM has also deferred 3 parcels because the parcels contain lands with wilderness characteristics in the "Currant Canyon Inventory Unit." Deferral of these parcels is unjustified as "lands with wilderness characteristics" are not protected lands under statute or duly adopted regulation and, regardless of wilderness character, must at some point be made available for leasing under the Mineral Leasing Act. Instead of proverbially "kicking the can down the road," the BLM should have analyzed ways to safeguard the integrity of these lands while still opening them up for leasing under the VFO RMP and as required by law. For example, many of the deferred parcels are adjacent to parcels with existing leases, and parcels with wilderness character may be accessible via directional drilling. The BLM should have, at a minimum, considered including these parcels in the lease sale with no surface occupancy stipulations. The State protests the deferral of both the un-inventoried parcels and the parcels in the Currant Canyon unit and requests that all 12 parcels be included in the upcoming lease sale.

### **State Courtesy Review Used to Defer Parcels**

The State reviewed the proposed preliminary list of lands considered for sale in a letter dated May 6, 2016. In that letter, the State, in conjunction with the Utah Division of Wildlife Resources (UDWR) recommended measures to minimize the impact to federally listed species, state sensitive species, game, and sportfish that occur on potential lease parcels. The State's recommendations for sensitive parcels included a prohibition on construction during certain periods of the year, mitigation of construction activities, and best management practices. Most of the parcels addressed in the State's letter were then deferred from the lease sale in the EA. At no point did the State request or recommend that any parcels be deferred in the lease sale.

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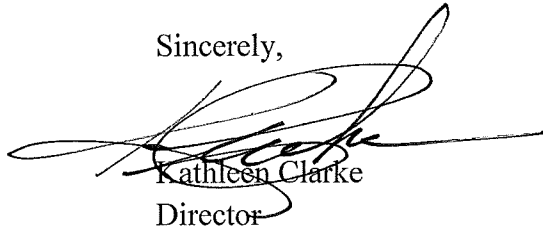
The BLM should offer all 79 parcels for lease, including the parcels for which the State provided recommendations. The BLM should then incorporate the specific protections requested by the State. This would allow for responsible development of oil and gases resources while protecting wildlife habitat and recreation. The State's proposal would allow for a balanced approach to these competing demands. Unfortunately, the BLM's deferral of 79 parcels is a one-sided approach that is neither necessary nor appropriate to the BLM's mission.

The State's review of the BLM's preliminary list is a courtesy provided by the State, in the spirit of FLPMA's requirement for coordination between the State and the BLM. It is an opportunity for the BLM to benefit from the State's expertise in the field of wildlife management. Unfortunately, when the BLM uses the State's recommendations in the preliminary review as cause to defer parcels from the lease sale, it disincentives the State from providing a helpful, thorough review of future lease sales. The State's wildlife recommendations should not be used as a BLM tool to further stonewall oil and gas leasing.

### **Conclusion**

The State appreciates this opportunity to protest the deferral of parcels from the November 2016 Lease Sale. The best management of public lands will occur when the State and the BLM work cooperatively towards balanced development and preservation. The State's recommendations on wildlife habitat represent the balance, and the BLM should include all of the deferred parcels in the upcoming lease sale while incorporating those recommendations. Please contact the State's Public Lands Policy Coordinating Office with any questions.

Sincerely,



Kathleen Clarke  
Director